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April 4, 2011

Filed Under Seal but Requesting Unsealing and Docketing

Via Fax 718-613-2236 (With Hard Copy to Follow via FedEx)

The Hon. Brian M. Cogan
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: U.S. v. Doe
EDNY Case No. : 98-CR-1101
Our File No. : 07765.00155

Dear Judge Cogan:

We represent attorney "Richard Roe." Enclosed herewith is Mr. Roe's declaration, submitted in compliance with this court's orders. As you indicated in your order this morning that the documents would be returned to Mr. Roe should he prevail on appeal, please note that a complete set of the documents at issue are being included with the hard copy of Mr. Roe's declaration which is being FedEx'd to Your Honor. As indicated in his declaration, he has deleted the documents from his computers and online accessible automated offsite back-up service, and has no hard copies.

Notwithstanding Roe's compliance, we wish to note that it appears from your orders that Your Honor is under the mistaken impression that these documents are subject to a sealing order, and that the Judge Glasser's oral directive of July 20, 2010 was intended to rectify a breach of a sealing order. Please note that Judge Glasser acknowledged, on the record of the July 20 hearing, that no sealing order apparently had been entered, and even if one had been issued it likely would have been binding only on court personnel. *See, e.g.,* JA 696-97. Rather, the July 20 oral directive was issued to preserve the status quo while Judge Glasser received additional briefing on the issue of whether a sealing order could be binding on a third-party, and whether any injunctive relief against Mr. Roe could eventually be entered. (JA 700-702). Thus, the statement in today's order that Mr. Roe will get the documents back if the "sealing order" is overturned on appeal betrays a misapprehension of the record, a misapprehension that is understandable given the rushed context in which this issue was raised for the Court but one nonetheless we cannot suffer to go uncorrected. Quite simply, there is no "sealing order."

We respectfully note the Court did not explicitly address our argument that the oral directive was invalid and not enforceable, specifically and without limitation because it was never reduced to writing, and because controlling Second Circuit precedent, to wit *Garcia v.*

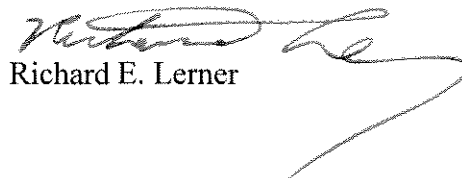
Yonkers School Dist., holds that such an oral directive is not an enforceable order; nor has the Court addressed our request for a stay pending appeal

Consequently, we also wish to notify the Court that we will be filing an immediate appeal from the injunction requiring Mr. Roe to return or destroy the documents, but in the meantime we most respectfully submit the annexed.

Finally, we renew our request that all of our letters and the April 1st transcript be docketed and that it be unsealed.

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP


Richard E. Lerner

cc: **Via E-Mail (with declaration of Roe, but without exhibits thereto)**
Michael Beys and Nader Mobargha – Counsel for Doe
Todd Kaminsky – US Attorney's Office
David Schulz – Counsel for Roe
"Richard Roe"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

“JOHN DOE,”

Defendant.

“RICHARD ROE,”

Non-Party Respondent.

x

: 98 CR 1101

: **Filed Under Seal with
Request to Unseal**

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x

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DECLARATION OF FREDERICK M. OBERLANDER

I, Frederick M. Oberlander, state under penalty of perjury, pursuant to 28 U.S.C. 1746, as follows:

1. In these proceedings, I have been referred to as “Richard Roe.” However, as I believe I cannot be sworn without giving my true name, I submit this declaration in order to comply with this court’s oral order, made on the record of the proceedings of April 1, 2011, which was followed by a written order dated April 4, 2011, denying my application for reconsideration of the April 1st oral order.

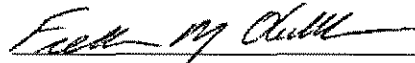
2. I am an attorney duly admitted to practice before the courts of the State of New York. I am also admitted to practice before the United States District Court for the Southern District of New York.

3. I was present at the proceedings on April 1st, and have read the transcript thereof. I have also read this court’s order of April 4th. I hereby affirm that I have complied with the order to the best of my knowledge, understanding, and abilities.

4. To the best of my knowledge, and upon a duly diligent search, I have no further printed copies of the five documents in question in my possession. However, printed copies of the documents in question are being submitting to this court with this declaration, so that they may be returned to me when I prevail on appeal.

5. I have deleted the electronic copies of these documents from all of my computers on which they were stored. I have also deleted these documents from the online accessible offsite automated file backup service that I employ.

Dated: Suffolk County, New York
April 4, 2011



Frederick M. Oberlander